FEDERATION REPORTS.

KWONG SHIN KONGSI v. KADERBHOY.

[Orig. Civ. Juris. (Russell, J.) August 12, 1949]

[K.L. — Civil Application No. 13 of 1949]

Landlord and Tenant — Rent Control Ordinance, S. 8(3) — Landlord not a party to an agreement to assign — Whether bound thereby.

In this case one Abdul Kadir tenant of a premises entered into a partnership agreement with the applicants to carry on business in the said premises and by clause 8 of the agreement Abdul Kadir undertook to assign the tenancy of the partnership. He later retired from the partnership without assigning the tenancy.

The questions raised for determination were: (a) Whether the partnership agreement operated as an assignment of the tenancy in favour of the applicants, and (b) Whether the applicants were an "interested person" within the meaning of S. 8(3) of the Control of Rent Ordinance, 1948.

Held, (a) that although Abdul Kadir agreed to assign the tenancy he never did in fact assign it and his agreement to assign could not operate as an assignment against the Respondent who was a complete stranger to the said agreement and was in fact unaware of it until some two years later; (b) that once a notice to quit was served on Abdul Kadir and he continued in possession as a statutory tenant his right was merely a personal right to retain possession and could not be assigned to another; and (c) that as there was no assignment of the tenancy to the applicants, they did not come within S. 8(3) of the Ordinance.

Cases referred to :—

(1) *Keeves v. Dean* (1924) 1 K.B. 685 followed.

(2) *In re Anstis* (1886) 31 Ch. D. 586.

(3) *In re Plumptre's Marriage Settlement* (1910) 1 Ch. 609.

CASE STATED BY RENT BOARD.

B. J. P. Joaquim and *M. Edgar* for the Applicants.

F. G. Charlesworth for the Respondent.

Cur. Ad. Vult.

Russell, J. : — This is a special case reserved for consideration of the High Court by the Rent Assessment Board under Section 10 of the Control of Rent Ordinance, 1948.

The Respondent, who is the tenant of the whole of a shop house No. 43, Ampang Street, Kuala Lumpur, by an agreement in writing dated the 1st day of June, 1946, sublet the front portion of the ground floor (hereinafter called the premises) to one Abdul Kadir for a period of twelve months at a monthly rent of two hundred dollars.

On the 12th of June, 1946, Abdul Kadir entered into a partnership agreement in writing with one Hoe Chee Ming whereby they constituted themselves into a partnership firm, the Kwong Shin Kongsi, (hereinafter called the applicants) for the purpose of carrying on business in the premises.

Clause 8 of the partnership agreement reads as follows :—

> "8. The said Abdul Kadir bin Kala Khan hereby declares that he holds the right of tenancy to house No. 43, Ampang Street, Kuala Lumpur, for and on behalf of the partnership and undertakes to transfer the said tenancy to the partnership whenever he is required to do so by his co-partner."

On the expiration of the twelve months fixed in the agreement of tenancy between the Respondent and Abdul Kadir, the Respondent took no steps to recover possession of the premises and Abdul Kadir continued in possession as a monthly tenant of the Respondent.

In November, 1947, the Respondent served a notice to quit upon Abdul Kadir which expired on 31st December, 1947, and again in February, 1948 the Respondent served a second notice to quit upon Abdul Kadir. This notice expired on 31st March, 1948. Abdul Kadir still remained in possession of the premises and in April, 1948, the Respondent started proceedings in the High Court to recover possession. This suit, Civil Suit No. 31 of 1948, was eventually dismissed on the ground that the premises were controlled premises within the provisions of the Control of Rent Ordinance, 1948 (hereinafter referred to as the Ordinance).

On the 30th of August, 1948, Abdul Kadir retired from the partnership business leaving Hoe Chee Ming the sole proprietor of the Kwong Shin Kongsi.

On the 26th of October, 1948, the Applicants applied to the Rent Assessment Board for an order fixing the rent of the premises under Section 8(3) of the Ordinance claiming to be sub-tenants of the Respondent as from the 1st day of June, 1947, the tenancy agreement between Abdul Kadir and the Respondent having terminated on 31st May, 1947.

On the 11th of December, 1948, the applicants gave notice of an amendment in their grounds of application to the Board by which they claimed that Clause 8 of the partnership agreement vested the beneficial interest of the tenancy granted to Abdul Kadir in themselves and that this clause operated as an assignment of the tenancy of Abdul Kadir to them.

The Respondent was not aware that Abdul Kadir had retired from the partnership until the filing of the application before the Rent Assessment Board, and he was not aware of the partnership agreement between the Applicant and Abdul Kadir until it was disclosed in Civil Suit No. 31 of 1948.

At the hearing of the application by the Board, the Board reserved for consideration by the High Court the following questions of law:—

(1) whether Clause 8 of the partnership agreement operated as an assignment of the tenancy of Abdul Kadir to the Kwong Shin Kongsi.

(2) if not, whether the Kwong Shin Kongsi is an "other person interested" within the meaning of Section 8(3) of the Control of Rent Ordinance, 1948 and is therefore able to apply to the Board for the purpose of having the rent paid or due in respect of the premises fixed for any period and, if so, what period.

As regards (1), the tenancy between the Respondent and Abdul Kadir contained no restrictive covenant concerning assignment and therefore the tenancy was assignable. It was not disputed that Clause 8 of the partnership agreement was an agreement to assign by Abdul Kadir for valuable consideration, and it was argued on behalf of the Applicants that this agreement must be regarded in equity as an actual assignment in that equity looks upon that as done which ought to be done or which is agreed to be done — Vol. 20 Hailsham Edition of Halsbury, Laws of England, page 89 para. 82).

This maxim was considered by Lindley, L.J. in *In Re Anstis*[2] and in his judgment at page 605 he stated:—

> Equity, no doubt, looks on that as done which ought to be done; but this rule, although usually expressed in general terms, is by no means universally true. Where the obligation to do what ought to be done is not an absolute duty, but only an obligation arising from contract, that which ought to be done is only treated as done in favour of some person entitled to enforce the contract as against the person liable to perform it.

This case was cited with approval by Eve, J. in *In Re Plumptre's Marriage Settlement*[3].

The Respondent was a complete stranger to the partnership agreement, he was in fact unaware of it until some two years after it had been signed and there has never been any agreement to assign which the applicants could have enforced against him. The position is therefore that, although the tenancy of Abdul Kadir was assignable and although he agreed with the Applicants to assign it, he never did in fact assign it and his agreement to assign cannot operate as an assignment against the Respondent. Further, once a notice to quit had been served upon Abdul Kadir by the Respondent and he had continued in possession as a statutory tenant, his right was merely a personal right to retain possession and could not be assigned to another — *Keeves v. Dean*[1].

I have now to consider the second question, namely, whether the applicants are an "other person interested" within the meaning of Section 8(3) of the Ordinance. Having formed the opinion that there was no assignment of the tenancy to the applicants, and there being no contention by the Applicants that they were tenants of the Respondent or sub-tenants of Abdul Kadir, it is difficult to see upon what foundation this alleged interest is based. There has never been any privity of estate between the applicants and the Respondent. All that happened is that during his tenancy of the premises, Abdul Kadir allowed his partnership business with Hoe Chee Ming, which was known as the Kwong Shin Kongsi, to be carried on in the premises. The rent was always paid by Abdul Kadir and the receipts were issued in his name (paragraph 18 (1) of special case), and although as long as he allowed his partnership business to be carried on at the premises, the rent payable by him may have been of some concern to his fellow partner, nevertheless the partnership in my opinion had no interest in the premises. Again, although the Applicants continued to occupy the premises after Abdul Kadir had retired from the business and vacated the premises they had no right in law so to do. From that date they were in my opinion trespassers and in the circumstances were not such interested persons as to enable them to apply to the Board for the purpose of having the rent paid or due in respect of the premises fixed for any period.

I order the Applicants to pay the costs of the proceedings before me by virtue of the provisions of Section 10 (3) of the Ordinance.

Application Dismissed.

DIN BIN MAT AKIP v. SOM BINTI SAAID.

[Orig. Civ. Juris. (Callow, J.) September 24, 1949]

[Kedah — Civil Suit No. 63 of 1949]

Limitation Enactment, Kedah, S. 26 — Action for administration of estate of Muslim — Whether the action is barred by limitation — Administration of Estates Enactment, Kedah.

In this case the deceased died in 1918 leaving land in Kedah. No application for Letters of Administration was made but near relatives of the deceased continued in occupation of the property. In 1948 the plaintiff sought and obtained Letters of Administration. At this